

## **Indiana Department of State Revenue**

### **Revenue Ruling # 2006-04ST**

August 18, 2006

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

### **ISSUE**

Sales/Use Tax -  
Taxation of Products Provided to End User by Telecommunications Service Provider

Authority: IC 6-2.5-4-6; Information Bulletin # 2

The taxpayer requests the Department to rule as to the proper taxation of transactions between the taxpayer and telecommunications service providers where the product will be provided to the end user via the telecommunications service provider.

### **STATEMENT OF FACTS**

The taxpayer develops billing software for telecommunications carriers and the products will be provided to the ultimate user by a telecommunications service provider. Related transactions may either be reported on the same invoice as taxable products or listed as separate line items on the end user's invoice.

### **DISCUSSION**

IC 6-2.5-4-6 defines Telecommunications services and the aggregation of taxable and nontaxable services on customer bills:

(a) As used in this section, "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.

(b) A person is a retail merchant making a retail transaction when the person:

- (1) furnishes or sells an intrastate telecommunication service; and
- (2) receives gross retail income from billings or statements rendered to customers.

(c) Notwithstanding subsection (b), a person is not a retail merchant making a retail transaction when:

- (1) the person provides, installs, constructs, services, or removes tangible personal property

which is used in connection with the furnishing of the telecommunication services described in subsection (a);

(2) the person furnishes or sells the telecommunication services described in subsection (a) to another person described in this section or in section 5 of this chapter;

(3) the person furnishes telecommunications services described in subsection (a) to another person who is using a prepaid telephone calling card or prepaid telephone authorization number described in section 13 of this chapter; or

(4) the person furnishes intrastate mobile telecommunications service (as defined in IC 6-8.1-15-7) to a customer with a place of primary use that is not located in Indiana (as determined under IC 6-8.1-15).

(d) Subject to IC 6-2.5-12 and IC 6-8.1-15, and notwithstanding subsections (a), (b), and (c), if charges for telecommunication services not taxable under this article are aggregated with and not separately stated from charges subject to taxation under this article, the charges for nontaxable telecommunication services are subject to taxation unless the service provider can reasonably identify the charges not subject to the tax from the service provider's books and records kept in the regular course of business.

The first transaction is a service activation and termination transaction. The charge that is associated with it involves processing the customer's request to activate or terminate service and is applicable to both wireless and landline telephone services. Pursuant to subsection (c) of IC 6-2.5-4-6 where no tangible personal property is provided, installed, constructed, serviced, or removed the transaction is taxable. Therefore, because no tangible personal property is transferred in this transaction, the transaction is taxable.

The second and third transactions involve providing wireless telephone features such as caller ID, call forwarding, 3-way calling and speed dialing as well as wireless voicemail. These features are provided in conjunction with the wireless telephone service.

Example number 2 of Sales Tax Information Bulletin # 51T makes clear that ancillary services that affect the transmission itself and not the information contained therein are taxable whereas transactions such as voicemail are not taxable stating:

Call waiting, caller ID, call forwarding, distinct ringing, and similar service enhancements are acting upon the transmission itself and do not affect the information contained in the transmission. These services or enhancements are therefore subject to sales tax. Voice mail and similar services are value added services which utilize computer processing applications to act upon the information for purposes other than transmission. The main distinction between voice mail and the other services is that the other services enhance the telecommunication service itself rather than provide a distinct non-telecommunication service. Therefore, voice mail and similar services are not telecommunication services under the statute and not subject to sales tax if separately stated on the customer's monthly bill. These charges must be separately stated or they will be subject to tax as part of a taxable unitary transaction.

The fourth type of transaction deals with digital downloads of items such as ring tones, games, songs and video. The taxpayer's correspondence states that this type of transaction is billed on a "per click" basis and there is not normally a separate telecommunications charge.

This type of transaction also falls under example 2 of Information Bulletin # 51T and is taxable because it is an ancillary service that affects only transmission itself and not the information contained therein.

The fifth type of transaction is a one-time or monthly recurring charge for premium web content. The taxpayer's correspondence states that the premium content is usually "a better version of the free site." Additionally the quality of the music and/or video streams may be higher and there is additional information, for example archived articles, available. Due to the fact that the information being received is actually affected by the charge for the premium service and pursuant to Information Bulletin # 51T, this transaction is not taxable.

The sixth and seventh type of transaction are both taxable pursuant to the second part of example 2 in Information Bulletin #51T which states:

The voice mail service should not be confused with the transmission of voicemail messages. The company must pay sales or use tax on the intrastate transmission of the messages unless the company's purchase of telecommunication services is exempt from sales tax.

The text messages are similar in that the text message service itself is not taxable just as the voicemail service itself is not. However, the transmission of a text message is taxable.

The taxpayer's correspondence requests guidance regarding the taxation of a warranty or service agreement on a wireless telecommunications device. The taxpayer states that the agreement is an optional service and provides for low cost or free replacement of a lost, stolen or damaged device. Furthermore, the agreement may be with the original purchase or be offered to cover a phone already in the customer's possession. Finally when the customer loses or breaks their phone, the customer would pay directly for the replacement or repairs.

Information Bulletin # 2 states:

Optional warranties and maintenance agreements that also contain provisions for periodic services where tangible personal property will be supplied as a part of the unitary price fall within the ambit of Rule 45 IAC 2.2-4-2. This Rule, interpreting IC 6-2.5-4-1, states that where, in conjunction with rendering services, a service provider also transfers tangible personal property for a consideration, this will constitute a retail transaction unless:

1. The service provider is in an occupation that primarily furnishes and sells services, as distinguished from tangible personal property;
2. The tangible personal property is used or consumed as a necessary incident to the service;
3. The price charged for the tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and
4. The service provider pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

If the provisions contained in the warranties or agreements are not in complete compliance with all provisions of Rule 45 IAC 2.2-4-2, this will constitute a transaction of a retail merchant selling at retail. Thus, the service provider must collect sales tax on the unitary price pursuant to IC 6-2.5-2-1. Any tangible personal property subsequently transferred to the buyer under the terms of the warranty or maintenance agreement is not subject to sales tax.

Therefore, if the agreement fully conforms to Sale Tax Information Bulletin # 2, the warranty or service agreement will not be taxable. If the agreement fails to fully comply with it, the subsequent transactions pursuant to the agreement will be taxable.

The final transaction inquired about is a service change charge. The charge associated with it is a charge to process or to add or change features. (i.e. to add the 3-way feature) This charge is similar in nature to the activation and termination charge in that no actual transfer of tangible personal property is normally associated with it and therefore the transaction is taxable pursuant to subsection (c) of IC 6-2.5-4-6 where no tangible personal property is provided, installed, constructed, serviced, or removed.

### **RULING**

The Department rules as follows:

- Transaction 1: Taxable
- Transaction 2 and 3: Taxable
- Transaction 4: Taxable
- Transaction 5: Not Taxable
- Transaction 6 and 7: Taxable
- Transaction 8: Not Taxable
- Transaction 9: Not taxable

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

**Indiana Department of State Revenue**